

Special Civil Application No 6778 of 95

to

Special Civil Application No 6780 of 95

Date of decision: 08/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABDUL AJIJ A PATEL vs STATE OF GUJARAT

Appearance: MR YN RAVANI for Petitioner

GOVERNMENT PLEADER for

Respondent No. 1, 4

MR DA BAMBHANIA for Respondent No. 2

Coram : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

As the facts and grounds to challenge the order of termination in the writ ipetition filed by the petitioners are alomost identical, these writ petitions are being disposed of by this common order.

2. The petitioners are challenging the order of termination of services. The petitioners were appointed as Tracers in the respective District Panchayat. The termination of services has been made due to economy measure. One of the grounds on which the order of termination has been challenged is that, the respondents have not complied with the provisions of section 25-F of the Industrial Disputes Act 1947. The petitioners are in services of the respective District Panchayat for a period varying 10 years to 13 years and they have completed more than 240 days service in a completed year. It is a case of retrenchment and as such, the petitioner being workmen and the District Panchayat is an Industry, provisions of section 25F of the Industrial Disputes Act should have been made applicable. The petitioners have not been given one months notice or one month's pay in lieu of notice as well as retrenchment compensation. On reading the order of termination it is clear that the order of termination has been made in violation of section 25F of the Industrial Disputes Act 1947. It is a void abinitio order. Mr. Yogesh Lakhani learned counsel for the petitioner has raised further contentions also. Mr. D.A. Bambhania learned counsel for the respondents raised a preliminary objection that as the petitioners have challenged the order of termination on the ground of violation of provisions of section 25F of the Industrial Disputes Act, they have an alternative remedy to approach the forum provided under the Industrial Law. So far as the factual matrix is concerned, it is not disputed by Shri Bambhania that before terminating the services of the petitioners, provisions under section 25F have not been complied with.

3. It is also not disputed by Shri Bambhania that provisions of Industrial Disputes Act 1947 are not applicable to the case of the petitioners. It is not disputed by Shri Bambhania that District Panchayat is an 'industry' and the petitioner is a 'workman'. Mr. Bambhania contended that District Panchayat has not been impleaded as a party in the petition. So far as the last contention of Mr. Bambhania is concerned, I fail to see any merit as the the officers of the District Panchayat are aggrieved party. None of the respondents has filed any reply to the petition.

4. As already referred above, it is an accepted ground that the order of termination has been made in violation of the provisions of section 25F of the Industrial Disputes Act and therefore, it is not necessary to deal with the other contention of Shri Ravani.

5. It is true that it is a matter of challenge to the order of termination on the ground of violation of the provisions of section 25-F of the Industrial Disputes Act, 1947. Ordinarily, the petitioner should have resorted to the forum provided under the Industrial Disputes Act but where the facts are not disputed,

then in such cases, it is not proper to ask the petitioner to go before the forum provided under the Industrial Disputes Act. Moreover, when oRule has been issued in these cases after hearing the learned counsel for the respondents and the court has not considered to be fit cases to be dismissed on the ground of alternative remedy. While issuing Rule in these cases the court has considered the illegality which has been committed in passing the order of termination i.e. non fulfilment of the conditions u/s.25F of the Industrial Disputes Act. The order of termination of a workman made in violation of the provisions of Section 25F of the Industrial Disputes Act 1947 is void abinitio in view of the judgment of the Supreme Court in the case of-----
----- . In these cases not only Rule has been issued, but operation of the order of termination has been stayed by this court and these petitions have come up for hearing at the earliest opportunity. Looking to the peculiar facts and circumstances of these cases I do not consider these cases to be fit cases in which the petitioners should non suited only on the ground of alternative remedy before the forum under the Industrial Disputes Act. The petitioners are workmen. As retrenchment of the petitioners have been made without fulfilling the conditions of section 25F of the Industrial Disputes Act 1947, orders of termination cannot be allowed to stay. In the result, all these three petitions are allowed. The termination of services is declared to be illegal and vague and without fulfilling the conditions laid down under section 28F of the Industrial Disputes Act. However, this judgment will not come in the way of respondents to pass a fresh order of retrenchment of the services of the petitioners after complying with the conditions laid down u/s 25F of the Industrial Dispsutes Act.

Rule is made absolute in the aforesaid terms. No order as to costs.

cgg

for correction,pl. see original.